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No. 91-812

IN THE
Supreme Court of the United States
OCTOBER TERM, 1991

PACIFIC BELL, PACIFIC TELESIS GROUP,
PACIFIC TELEPHONE & TELEGRAPH COMPANY,
PACIFIC TELESIS GROUP PENSON PLAN FOR
SALARIED EMPLOYEES,
Petitioners,

v.

LANA PALLAS (aka Lana Hubbs),
and persons similarly situated,
Respondents.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

MOTION TO FILE BRIEF AS *AMICUS CURIAE* AND BRIEF *AMICUS CURIAE* OF THE EQUAL EMPLOYMENT ADVISORY COUNCIL IN SUPPORT OF THE PETITION

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MOTION OF THE EQUAL EMPLOYMENT ADVISORY COUNCIL FOR LEAVE TO FILE BRIEF AS *AMICUS CURIAE* IN SUPPORT OF THE PETITION

To the Honorable, the Chief Justice and the Associate Justices of the United States Supreme Court:

Pursuant to Rule 37.1 and .2 of the Rules of this Court, the Equal Employment Advisory Council ("EEAC") respectfully moves this Court for leave to file the accompanying brief *amicus curiae* in support of the Petition in this case. The petitioners have con-

sented, but counsel for the respondents have refused consent to the filing of this brief. In support of this motion, EEAC by the following, shows that this brief brings to the attention of the Court the relevance and importance of this case beyond that presented in the petition.

1. EEAC is a nationwide association of employers organized in 1976 to promote sound approaches to the elimination of employment discrimination. Its membership comprises a broad segment of the employer community in the United States, including over 250 major corporations and several trade associations which themselves have hundreds of corporate members. Its Board of Directors is composed of experts in labor and equal employment opportunity. Their combined experience gives EEAC a unique depth of understanding of the practical, as well as legal aspects of EEO policies and requirements.

2. As employers, EEAC's members are subject to the provisions of Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e et seq., and the other various statutes, federal orders and regulations pertaining to nondiscriminatory employment practices. Most of EEAC's members have programs or policies whose eligibility requirements depend upon the length of service of employees. Also, many members have voluntary or collectively-bargained seniority systems under which length-of-service requirements determine benefit eligibility or the relative benefit and employment status among covered employees. As such, EEAC members have a direct interest in the issues presented for the Court's consideration in this case. This interest extends far beyond the interests of the parties to this case and the particular system at issue herein.

3. Here, the plaintiff complained that she was denied service credit for time spent on maternity leave in 1972. As a result, she was ineligible in 1987 for the employer's early retirement program, which required 20 or more years of net credited service. The district court, relying on *United Air Lines, Inc. v. Evans*, 431 U.S. 553 (1977), dismissed the suit, as it was based upon a denial of service credit which was legal when it occurred and which has no present legal consequences. On appeal, however, a panel of the Ninth Circuit reversed the district court and held 2-1 that the employer's continued refusal to give maternity leave service credit was a present act of discrimination, and thus not barred by the *United Air Lines* decision.

4. As the dissenting opinion below illustrates, the Ninth Circuit's decision departs from settled law and threatens to cause enormous confusion. Employers with length-of-service requirements will face great uncertainty when computing benefit eligibility, because they cannot accurately predict when events that occurred in the distant past will resurface as the basis for challenging their determinations. In addition, the rights of other employees whose own eligibility will be affected by service computations would be disrupted if the decision is allowed to stand. Many EEAC members have operations in the Ninth Circuit and will be covered directly by the decision. Moreover, inasmuch as the decision appears to disrupt settled law, it could cause uncertainty for employers who operate in many different circuits.

5. Accordingly, because of the potentially enormous impact upon employer programs that depend upon length of service requirements and rights and benefits, Supreme Court review of this case is of vital

concern to EEAC's nationwide employer constituency, as well as to countless unions and employers subject to such systems.

6. Because of this interest, EEAC participated as *amicus curiae* in the primary cases involved in this case. *See United Airlines v. Evans*, 431 U.S. 553 (1977); *Bazemore v. Friday*, 478 U.S. 385 (1986). EEAC also filed briefs in a number of other cases involving interpretation of Title VII's timely-filing requirements, Section 706(e), 42 U.S.C. § 2000e-5(e). *See Lorance v. AT&T Technologies, Inc.*, 490 U.S. 900 (1989); *Zipes v. Trans World Airlines, Inc.*, 455 U.S. 385 (1982); *Delaware State College v. Ricks*, 449 U.S. 250 (1980); and *Mohasco Corp. v. Silver*, 447 U.S. 807 (1980). *See also EEOC v. Commercial Office Products Co.*, 486 U.S. 107 (1988). In addition, EEAC has filed *amicus* briefs in other cases involving an analysis of Title VII challenges to the maintenance of allegedly discriminatory seniority systems. *Pullman-Standard v. Swint*, 456 U.S. 273 (1982); *American Tobacco Co. v. Patterson*, 456 U.S. 63 (1982); *California Brewrs Ass'n v. Bryant*, 444 U.S. 598 (1980); *Int'l Bro. of Teamsters v. United States*, 431 U.S. 324 (1977); *Trans World Airlines, Inc. v. Hardison*, 432 U.S. 63 (1977); and *International U. of Elec. Wkrs. v. Robbins & Meyers, Inc.*, 429 U.S. 229 (1976).

7. EEAC moved to file a brief *amicus cuirae* in the court below supporting Pacific Bell's petition for rehearing and suggestion for rehearing en banc. Pacific Bell's petition, however, was denied on September 26, 1991. As a result, when the court acted on EEAC's motion on October 23, 1991, the motion was denied as moot.

8. Pacific Bell's petition was filed with the Court on November 18, 1991. Accordingly, EEAC's brief is due to be filed no later than December 18, 1991. As EEAC's brief was filed before that date, it is timely under Rule 37.2 of this Court's Rules.

WHEREFORE, it is respectfully moved that EEAC be granted leave to file the accompanying brief *amicus curiae* in this case.

Respectfully submitted,

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BRIEF *AMICUS CURIAE* OF THE EQUAL EMPLOYMENT ADVISORY COUNCIL IN SUPPORT OF THE PETITION

The Equal Employment Advisory Council ("EEAC"), respectfully submits this brief *amicus curiae* contingent upon the granting of the accompanying motion.[1] The brief supports the petition for

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[1] A letter of consent from Pacific Bell's counsel consenting to the filing of EEAC's brief has been filed with the Clerk of the Court.

a writ of certiorari filed in this case by Pacific Bell, and urges reversal of the decision below.

INTEREST OF THE *AMICUS CURIAE*

The interest of the *amicus curiae* is fully set forth in the accompanying motion.

STATEMENT OF THE CASE

Plaintiff began employment with the predecessor of Pacific Bell in 1967. In 1972, she had a break in service during which she took pregnancy leave. At that time, the company treated pregnancy leave as "personal" leave, which did not count toward retirement service. Service credit was given for other temporary disability leaves taken during the same period.

When the Pregnancy Discrimination Act amendments to Title VII, 42 U.S.C. § 2000e(k) ("PDA"), became effective in 1979, Pacific Bell changed its policy to give service credit for pregnancy leave taken thereafter. It did not go back and retroactively adjust service credit to grant credit for pregnancy leave taken before the PDA took effect.

In 1987, Pacific Bell provided an Early Retirement Option (ERO), which was made available to employees with 20 or more years of net credited service. When plaintiff applied for the 1987 ERO, she was informed that she was a few days short of the 20 years of net credited service required to be eligible for the program. Had she been given credit for the time she spent on pregnancy leave in 1972, she would have met the eligibility requirements.

The plaintiff's lawsuit alleges that the failure to count her 1972 pregnancy leave toward her ERO eligibility violated Title VII as amended by the PDA.

The district court granted Pacific Bell's motion to dismiss the complaint. The district court stated that prior to the PDA amendments to Title VII, "employer disability benefit plans which failed to cover pregnancy-related disabilities were not unlawful. *General Elec. Co. v. Gilbert*, 429 U.S. 125, 97 S. Ct. 401 (1976)." Pet. App. at 18A.[2]

The district court further noted that because the plaintiff had not preserved any claim of discrimination from 1972, "plaintiff's cause of action arises solely from post-1979 applications of her Net Credited Service without adjustment to credit the period of her 1972 pregnancy leave." Id. Judge Jensen also held that the policy was facially neutral, and that the complaint was based upon 1972 conduct that had no present legal consequences, citing *United Air Lines, Inc. v. Evans*, 431 U.S. 553 (1977).

The Ninth Circuit below, in a 2-1 decision, reversed the district court. The panel majority held that *United Air Lines* did not dispose of the case. Rather, it concluded that *Bazemore v. Friday*, 478 U.S. 385 (1986), was the applicable decision. As the panel majority read *Bazemore*, "Although the employer was not liable for acts of discrimination that occurred prior to the enactment of Title VII, the Court held that an employer could be held liable for discrimination perpetuated after the Act took effect." Pet. App. at 6a. The panel majority thus ruled that "Pacific Bell is liable for its decision to discriminate against Pallas in 1987 on the basis of pregnancy." *Id.*, at 6a-7a.

Judge Dumbauld dissented, stating:

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[2] Citations to the Petitioner's Appendix, including those to the decisions below, are designated as Pet. App. ——.

> [W]e confront a situation which we have no power to alleviate or remedy. The appellee telephone company has simply applied a seniority system, which it uses as the criterion for according many kinds of employee benefits, and appellant simply did not have enough seniority to qualify for the early retirement which she sought.

Pet. App. at 8a.[3] The dissent stressed that the company lawfully excluded personal leave in determining service credits and that counting pregnancy leave as personal leave was lawful until the enactment of the PDA in 1978. Pet. App. at 9a.

Judge Dumbauld reasoned that Pacific Bell's policy was distinguishable from *Bazemore*, where a pay policy that was facially discriminatory against blacks constituted *present* discrimination with each pay check. Thus, when Pacific Bell looked at the plaintiff's net credited service, it merely applied preexisting seniority rules. Judge Dumbauld stated:

> In the case at bar, by contrast [to *Bazemore*], all that the telephone company is currently doing is applying a bona fide seniority system, which is not discriminatory on its face, and is specifically authorized by Congress.

Pet. App. at 10a. The dissent thus would have affirmed the district court and dismissed the complaint.

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[3] Judge Dumbauld broadly defined a seniority system as: "a method of record-keeping and mathematical calculation which determines how long an employee has worked for the employer." Pet. App. at 6a.

SUMMARY OF THE REASONS FOR GRANTING THE WRIT

This *amicus curiae* brief is filed to stress the importance of the issues in this case beyond the particular employer and specific system of calculating time in service. EEAC's members are concerned that the Ninth Circuit's decision will disrupt many types of employer and union programs that depend upon length-of-service calculations. This could include a whole range of seniority benefits, as well as selection of days off, overtime distribution, pension calculations, wage adjustments and many other programs. Predictable length-of-service calculations, by contrast, "promote stability and certainty among employees, furnishing a predictable method by which to measure future employment positions." *California Brewers Ass's v. Bryant*, 444 U.S. 598, 605-06 (1980) (dissenting opinion of Justice Marshall).

The decision below is based upon a faulty assumption that the Petitioners can be held liable for a "program that adopted, and thereby perpetuated, acts of discrimination that occurred prior to enactment of the Pregnancy Discrimination Act [PDA]." Pet. App. at 6a-7a. In ruling that conduct that is not itself actionable can be the basis for a discrimination claim, the Ninth Circuit put itself at odds with the decisions of this and other courts. *See, e.g., United Air Lines v. Evans*, 431 U.S. 553 (1977); *Teamsters v. United States*, 431 U.S. 324, 353 (1977); *Schwabenbauer v. Bd. of Educ. of City of Olean*, 777 F.2d 837 (2d Cir. 1985); *Farris v. Bd. of Educ. of City of St. Louis*, 576 F.2d 765 (8th Cir. 1978).

The basic holding below is that the employer must now give service credits for leave time that the em-

ployer was permitted to treat as personal leave when the leave was taken. As this Court ruled: "to accept the argument would require us to hold that a seniority system becomes illegal simply because it allows the full exercise of the pre-Act seniority rights of employees of a company that discriminated before Title VII was [amended]." *Teamsters v. United States*, 431 U.S. at 353. Thus, the conduct at issue in this case "has no present legal consequences." *United Air Lines*, 431 U.S. at 558. The Ninth Circuit majority ruling, however, would improperly "destroy or water down the vested seniority rights of employees." *Id.*, at 352-53.

The Ninth Circuit, moreover, improperly applied *Bazemore v. Friday*, 478 U.S. 385 (1986), so as to undercut greatly *United Air Lines*. *Bazemore* found a violation because after Title VII was amended to apply to state and local governments, the employer continued to apply a facially *discriminatory* pay system that paid black workers less than whites for the same work. Here, the employer changed its leave policy immediately when the PDA came into effect. Moreover, *Bazemore* did not involve a facially *neutral* seniority system such as applied by Pacific Bell. For these reasons, we urge the Court to grant the petition for review in this case.

REASONS FOR GRANTING THE WRIT

THE NINTH CIRCUIT'S DECISION REQUIRING THE EMPLOYER TO GIVE SERVICE CREDITS FOR PRE-ACT PREGNANCY LEAVE IS CONTRARY TO PREVAILING LAW, CONFLICTS DIRECTLY WITH THE SUPREME COURT'S *UNITED AIR LINES* DECISION AND WOULD GREATLY DISRUPT LEGITIMATE LENGTH-OF-SERVICE AND SENIORITY SYSTEMS OF EMPLOYERS GENERALLY

A. The Decision Below Conflicts With Controlling Supreme Court Decisions And Other Lower Court Decisions Holding That Neutral Length-of-Service (Seniority) Systems Do Not Have To Be Disrupted Because Of The Effects Of Past Conduct That Has No Present Legal Consequences

The decision below holds that Pacific Bell violated Title VII in the following manner:

> In 1987, Pacific Bell instituted a program that *adopted, and thereby perpetuated, acts of discrimination which occurred prior to enactment of the Pregnancy Discrimination Act.* While the act of discriminating against Pallas in 1972 is not, itself, actionable, Pacific Bell is liable for its decision to discriminate against Pallas in 1987 on the basis of pregnancy.

Pet. App. 6a-7a (emphasis added). This unique holding is of great concern to the large majority of private employers, who have relied upon contrary decisions to conclude that promotions and other scarce employee benefits can be allocated in accordance with neutral length-of-service and seniority systems that cannot be challenged based upon distant allegations that "ha[ve] no present legal consequences." *United Air Lines, Inc. v. Evans*, 431 U.S. at 558.

The position taken by the panel majority was rejected by the Supreme Court a decade and a half ago. As the Court stated in the *Teamsters* decision:

> [O]ur reading of the legislative history [of Title VII] compels us to reject the Government's broad argument that no seniority system that tends to perpetuate pre-Act discrimination can be "bona fide." *To accept the argument would require us to hold that a seniority system becomes illegal simply because it allows the full exercise of the pre-Act seniority rights of employees of a company that discriminated before Title VII was enacted.* It would place an affirmative obligation on the parties to the seniority agreement to subordinate those rights in favor of the claims of pre-Act discriminatees without seniority. *The consequences would be a perversion of the congressional purpose.*

431 U.S. 324, 353 (1977) (emphasis added). As the Court explained, even a length-of-service requirement that perpetuates the effects of pre-Act discrimination will not violate Title VII:

> Although a seniority system inevitably tends to perpetuate the effects of pre-Act discrimination in such cases, the congressional judgment was that Title VII should not outlaw the use of existing seniority lists and thereby destroy or water down the vested seniority rights of employees simply because their employer had engaged in discrimination prior to the passage of the Act.

Id. at 352-53.

These principles were also applied in *United Air Lines, Inc. v. Evans*, 431 U.S. 553, which the district

court and Judge Dumbauld correctly saw as controlling precedent requiring dismissal of the complaint in the instant case. As *amicus curiae*, EEAC urges the Court to review the decision below in order to preserve the effectiveness of *United Air Lines* in assuring an orderly and predictable relationship in the allocation of jobs and employee benefits. Failure to reverse the Ninth Circuit's decision would threaten to disrupt many valid length-of-service and seniority systems.

United Air Lines involved a situation strikingly similar to the instant case. The plaintiff there worked as a flight attendant from 1966 to 1968. When she married in 1968, she was required to resign under United's policy of refusing to allow its female flight attendants to be married. In 1972, Evans was rehired as a new employee. She was not given any seniority credit for her prior service and "for seniority purposes, she [was] treated as though she had no prior service with United." 431 U.S. at 555.

Evans claimed that United was guilty of a present violation because it failed to give her credit after her rehire for service prior to her illegally-forced resignation in 1968. The Court explained that assuming her 1968 separation violated Title VII, "the question now presented is whether the employer is committing a second violation of Title VII by refusing to credit her with seniority for any period prior to February 1972 [when she was rehired]." *Id.* at 554. As the district court there noted, Evans was "seeking to have this court merely reinstate her November, 1966 seniority date which was lost solely by reason of her February, 1968 resignation." *Id.* at 556 n.8.

The Supreme Court held that United was entitled to "treat that past act *as lawful* after respondent

failed to file a [timely] charge." 431 U.S. at 558 (emphasis added). An alleged discriminatory act that has not been made the subject of a timely charge, the Court held, "is the legal equivalent of a discriminatory act which occurred before the statute was passed." *Id.* Thus, the act was "merely an unfortunate event in history which has *no present legal consequences.*" *Id.* (emphasis added).[4]

The Ninth Circuit here, however, mistakenly held that the *United Air Lines* line of cases does not apply, and that this case is controlled by *Bazemore v. Friday*, 478 U.S. 385 (1986). In *Bazemore*, however, no neutral seniority or length-of-service policy was involved. Indeed, *Bazemore* distinguished *Evans* because the plaintiff in the latter case "had made no allegation that the seniority system itself was intentionally designed to discriminate." 478 U.S. at 396 n.6.[5] By

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[4] *Accord, Schwabenbauer v. Bd. of Educ. of City of Olean*, 777 F.2d 837, 840 (2d Cir. 1985) (In computing whether employee completed probationary period, employer was not required to credit plaintiff's seven months of maternity leave taken prior to the 1972 amendments applying Title VII to state and local governments); *Farris v. Board of Ed. of City of St. Louis*, 576 F.2d 765 (8th Cir. 1978) (No violation even though failure to credit pre-1972 mandatory maternity leave kept plaintiff one step behind in salary schedule).

[5] Similarly, in the instant case, there can be no valid claim that the seniority system was adopted with a discriminatory intent. On a related matter, Section 112 of the recently-enacted Civil Rights Act of 1991 has no applicability to this case. In the first place, Section 118 is inapplicable because it does not apply to lawsuits pending when it was enacted, but shall only "take effect upon enactment." 137 Cong. Rec. S 15276 (daily ed. Oct. 25, 1991). *See Bowen v. Georgetown Univ. Hosp.*, 109 S.Ct. 468, 471 (1988).

In addition, Section 112 only reverses the decision in *Lorance v. AT&T Technologies, Inc.*, 490 U.S. 900 (1989).

contrast, as the *Bazemore* decision stated, the policy there was discriminatory on its face. The employer applied different wage scales to black workers than to whites before the 1972 effective date of Title VII, and continued to pay those discriminatory wages after it became subject to Title VII. In rejecting the application of *United Air Lines* to this case, the court of appeals reasoned that Pacific Bell's Early Retirement Opportunity was a new benefit program instituted long after the enactment of the PDA, and that the system was not facially neutral because it discriminated against women who had taken pregnancy leave before the PDA became effective in 1979. Pet. App. at 6a.

But the Ninth Circuit's reasoning is fatally flawed. The conduct it found illegal—the employer's failure to give service credit for pregnancy leave—occurred

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Section 112 is not a substantive provision; it merely extends Title VII's charge-filing period. There is no question about the timeliness of the charge in the instant case. Further, Section 112 is limited to cases where, unlike here, it is alleged that a seniority system "has been adopted for an intentionally discriminatory purpose." Only in those cases does Section 112 extend the time for the filing of a timely charge beyond the date the system is adopted to include the date when the individual becomes subject to the system or is injured by its application. See 137 Cong. Rec. S 15275 (daily ed. Oct. 25, 1991).

As to substantive matters, it is clear that Section 112 "should not be interpreted to affect the sound rulings of the Supreme Court regarding 'continuing violations' theory under Title VII. *See Delaware State College v. Ricks*, 449 U.S. 250 (1980)." 137 Cong. Rec. S 15485 (daily ed. October 30, 1991) (Sen. Danforth); and 137 Cong. Rec. H 9530 (daily ed. Nov. 7, 1991) (Rep. Edwards). *Ricks*, of course, reaffirmed *United Air Lines v. Evans*.

not in 1987, but in 1972, when it was lawful. All Pacific Bell did in 1987 was apply a facially neutral length-of-service system based on the service credits for which employees were eligible based upon prevailing law in effect when the personal leave was taken. As the dissent put it, the Company "has simply applied a seniority system, which it uses as the criterion for according many kinds of employee benefits, and the appellant simply did not have enough seniority to qualify for the early retirement which she sought." Pet. App. at 8a.

The Supreme Court held in *United Air Lines* that there could be no violation premised on the fact that at a much later date, the employer made a seniority calculation that excluded from prior service time during which the employee presumably would have worked had she not been illegally discharged because she became married. Such conduct was illegal when it occurred. Thus, there is an even stronger argument in the instant case to apply the rationale of *United Air Lines*, because the treatment of maternity leave as "personal leave" did not violate Title VII until the PDA became effective in 1979.

The decision below thus directly conflicts with *United Air Lines* and is likely to cause extreme confusion for large employers with operations in the Ninth and other circuits. Unless reversed, the decision will make it impossible for employers to know when previously legal or time-barred allegations might resurface to jeopardize benefit calculations or the allocation of job rights based upon relative length-of-service.

B. The Decision Below Will Disrupt The Administration of Seniority and Length-of-Service Systems, Causing Conflict With Title VII's "Special Treatment" of Such Systems

If left standing, the court of appeals' decision in this case will disrupt seniority and length-of-service requirements in a manner directly contrary to Congressional intent. This disruption is likely to affect many types of employer and union programs that depend upon length-of-service calculations.

In Title VII, Congress "afforded special treatment" to seniority systems. *Trans World Airlines, Inc. v. Hardison*, 432 U.S. 63, 81 (1977). Congress made it explicit that it did not intend to "destroy or water down the vested seniority rights of employees" under neutral seniority systems. *International Bro. of Teamsters v. United States*, 431 U.S. 324, 352-53 (1977).

Although Title VII does not define the term "seniority system," this Court has held that the term should be defined broadly.

> In the area of labor relations, "seniority" is a term that connotes length of employment. A "seniority system" is a scheme that, alone or in tandem with non-"seniority" criteria, allots to employees ever improving employment rights and benefits as their relative lengths of pertinent employment increase. . . [T]he principal feature of any and every "seniority system" is that preferential treatment is dispensed on the basis of some measure of time served in employment.

California Brewers Ass'n v. Bryant, 444 U.S. 598, 605-06 (1980). Thus, the length-of-service feature "promotes stability and certainty among employees, furnishing a predictable method by which to measure

future employment positions." 444 U.S. at 614 (dissenting opinion by Justice Marshall).

The use of length-of-service requirements permeates corporate labor relations policies. For example,

> Collective agreements generally provide for the recognition of seniority in several, and often many, aspects of the employment relationship. Among these are promotions, layoffs, rehiring, shift preference, transfers, vacations, days off, and overtime fork.

F. Elkouri and E. Elkouri, *How Arbitration Works* 590 (4th ed. 1985). Also, over the years, there has been:

> a dramatic rise in the number and types of benefit programs. Almost without exception, entitlement to these new benefits has been geared to seniority. In fact, this was occasionally a part of bargaining strategy; the new benefit was made more palatable cost-wise to management by limiting it to employees with long service.

S. Slichter, J. Healy, and E. Livernash, *The Impact of Collective Bargaining on Management* 105 (1960).[6]

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[6] The authors provide an extensive listing of areas affected by length of service requirements: selection of days off; overtime distribution; vacation privileges; parking privileges; vacations; pensions; severance pay; holidays; sick leave; group life and hospitalization insurance; health and welfare plans; unemployment benefits; intra-range wage movements; length-of-service wage adjustments; promotions; and long service awards. *Id.* at 106-12. For other examples, *see Collective Bargaining Negotiations and Contracts* (BNA) at 44:51-44:52 (insurance); 48:51-48:56 (retirement, annuity and death benefits); 58:7 (holiday pay); 91:3-91:5 (vacations).

As a representative of a large and diverse group of major employers who use and administer such systems on a daily basis, EEAC urges this Court to consider the disruptive impact its decision in this case could have on the whole range of employer programs based upon length-of-service and seniority calculations. Before compelling employers, in effect, to recalculate virtually all employee benefit and seniority rights, as they will either have to do or risk discrimination findings based upon outdated or time-barred claims if this decision stands, EEAC urges the Court to grant the petition and review the decision of the court below.

CONCLUSION

For the foregoing reasons, the *amicus curiae* EEAC urges the Court to grant Pacific Bell's petition for writ of certiorari.

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